action payable to the assignee, but an evidence of the assignee's right, title and estate in and to property".

The doctrine of *Brown* v. *Fletcher* is adequately supported by courts and writers. *Narragansett Mutual Fire Ins. Co.* v. *Burnham*, 51 R. I. 371; *Bates* v. *Decree of Court*, 131 Me. 176; Bogert, Handbook of the Law of Trusts, 430; 3 Pomeroy Equity Jurisprudence, Fourth Edition, 1928, Sec. 975, p. 2117; 17 Columbia Law Review, 269, 289. We find no reason for departing from it.

The challenged judgment must be reversed.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 658.—October Term, 1934.

Max. Senior, Appellant,
vs.
George C. Braden, Quincy A. Davis, Carleton S. Dargusch, et al., etc.

Appeal from the Supreme Court of the State of Ohio.

[May 20, 1935.]

Mr. Justice Stone.

I think the judgment should be affirmed.

Tax laws are neither contracts nor penal laws. The obligation to pay taxes arises from the unilateral action of government in the exercise of the most plenary of sovereign powers, that to raise revenue to defray the expenses of government and to distribute the burden among those who must bear it. See *State of Alabama* v. *United States*, 282 U. S. 502, 507. To that obligation are subject all rights of persons and property which enjoy the protection of the sovereign and are within the reach of its power.

For centuries no principle of law has won more ready or universal acceptance. Even now that it is doubted, the doubt is rested on no more substantial foundation than want of "jurisdiction" to tax, and the assertion that the Fourteenth Amendment is endowed with a newly discovered efficacy to forbid "double taxation" when the sovereignty imposing the tax is that of two or more states. See *Farmers Loan & Trust Co.* v. *Minnesota*, 280 U. S. 204, 210; *Safe Deposit & Trust Co.* v. *Virginia*, 280 U. S. 83, 92; *Baldwin* v. *Missouri*, 281 U. S. 586, 593; compare *Burnet* v. *Brooks*, 288 U. S. 378, 400 *et seq.* But as no opinion of this Court has undertaken to define the taxation which is thus forbidden because it is double, or to declare that different legal rights founded upon the same economic interest may never, under any circumstances, be compelled to contribute to the cost of government of two states whose protection they respectively enjoy, it would seem still to be open to inquiry whether the particular tax now imposed infringes any constitutional principle capable of statement and definition.

When we speak of the jurisdiction to tax land or a chattel as being exclusively in the state where it is located, we mean no more

than that, in the ordinary case of ownership of tangible property, the legal interests of ownership enjoy the benefit and protection of the laws of that state alone, and that it alone can effectively reach the interests protected for the purpose of subjecting them to the payment of the tax. Other states are said to be without jurisdiction, and so without constitutional power to tax, if they afford no protection to the ownership of the property and cannot lay hold of any interest in the property in order to compel payment of the tax. See *Union Transit Co.* v. *Kentucky*, 199 U. S. 195, 202; *Frick* v. *Pennsylvania*, 268 U. S. 473, 497.

But when new and different legal interests, however named, are created with respect to land or a chattel, of such a character that they do enjoy the benefits of the laws of another state and are brought within the reach of its taxing power, I know of no articulate principle of law or of the Fourteenth Amendment which would deny to the state the right to tax them. No one would doubt the constitutional power of a state to tax its residents on their shares of stock in a foreign corporation whose only property is real estate or chattels located elsewhere, *Darnell* v. *Indiana*, 226 U. S. 390; *Hawley* v. *City of Malden*, 232 U. S. 1; compare *Corry* v. *Baltimore*, 196 U. S. 466; *Kidd* v. *Alabama*, 188 U. S. 730; *Cream of Wheat Co.* v. *County of Grand Forks*, 253 U. S. 325, 329, or to tax a valuable contract for the purchase of land or chattels located in another state, see *Citizens National Bank* v. *Durr*, 257 U. S. 99, 108; compare *Gish* v. *Shaver*, 140 Ky. 647, 650; *Golden* v. *Munsiger*, 91 Kan. 820, 823; *City of Marquette* v. *Iron & Land Co.*, 132 Mich. 130, or to tax a mortgage of real estate located without the state even though the land affords the only source of payment, see *Kirtland* v. *Hotchkiss*, 100 U. S. 491; compare *Savings Society* v. *Multnomah County*, 169 U. S. 421; *Bristol* v. *Washington County*, 177 U. S. 133. Each of these legal interests, it is true, finds its only economic source in the value of the land, and the rights which are elsewhere subjected to the tax can be brought to their ultimate economic fruition only through some means of control of the land itself. But the means of control may be subjected to taxation in the state of its owner, whether it be a share of stock or a contract or a mortgage. There is no want of jurisdiction to tax these interests where they are owned, in the sense that the state lacks power to appropriate them to the payment of the tax. No court has condemned such action as capricious, arbitrary or oppressive. The

Fourteenth Amendment does not forbid it, for it is universally recognized that these interests of themselves are in some measure clothed with the legal incidents of property in the taxing state and enjoy there the benefit and protection of its laws.

Similarly, I do not doubt that a state may tax the income of its citizen derived from land in another state. The right to impose the tax is founded upon the power to exact it, coupled with the protection which the state affords to the taxpayer in the receipt and enjoyment of his income. *Lawrence* v. *State Tax Commission of Mississippi*, 286 U. S. 276, 279. I can perceive no more constitutional objection to imposing such a tax than to the taxation of a citizen on income derived from a business carried on by the taxpayer in another state, and subject to taxation there, which we upheld in *Lawrence* v. *State Tax Commission, supra;* see *Cook* v. *Tait*, 265 U. S. 47, or to the tax on income derived from securities having a tax *situs* in another state, upheld in *Maguire* v. *Trefry*, 253 U. S. 12; see also *Fidelity & Columbia Trust Co.* v. *Louisville*, 245 U. S. 54; compare *DeGanay* v. *Lederer*, 250 U. S. 376. The fact that it is now thought by the Court to be necessary to discredit or overrule *Maguire* v. *Trefry, supra*, in order to overturn the tax imposed here, should lead us to doubt the result, rather than the authority which plainly challenges it, and should give us pause before reading into the Fourteenth Amendment so serious and novel a restriction on the vital elements of the taxing power.

The present tax, measured by income, is upon intangible property interests owned by a citizen of Ohio. They are represented by transferable certificates, issued by trustees of land, under contracts by which each trustee undertakes to hold the title of specified lands in trust for the benefit of the certificate holders; to receive the income and to pay it over to them ratably, after meeting expenses and depreciation; and to receive and distribute ratably the proceeds of sale of the land if sold under existing options. In the event of default by the lessee, the trustee is given plenary authority to terminate the lease, take possession of the land and sell it, as fully as though it were the sole legal and equitable owner. The trustee is authorized to settle claims upon contract and tort made against the trustee or the trust estate, and is entitled to indemnity from the estate for all personal liability and expenses. It is authorized to borrow money and to give the trust estate as security.

The beneficiaries have no right to possession or to partition of the property, and can maintain no action at law with respect to it. They cannot be assessed, and incur no liability by virtue of the administration of the trust estate. The trust certificates are freely transferable, as are shares of stock in a corporation. The rights of the beneficiaries are so identified with the certificates that they may be transferred only on surrender of the certificate to the trustee. Certificates lost, stolen, or destroyed may be replaced by the trustee at its option and in its discretion. Compare *Kelliger* v. *Kentucky*, 213 U. S. 200, 206.

There is thus created an active trust of land, under which the trustee is clothed with all the incidents of legal ownership, and which is given the status of a business entity separate and distinct, for all practical purposes, from the interests of the certificate holders. See *Crocker* v. *Malley*, 249 U. S. 223; *Hecht* v. *Malley*, 265 U. S. 144, 161; *Burk-Waggoner Oil Association* v. *Hopkins*, 269 U. S. 110. The beneficiaries have none of the incidents of legal ownership. They can neither take nor defend possession of the land. But they are clothed with rights *in personam*, in form both contractual and equitable, enforcible against the trustee by suit in equity for an accounting, to compel performance of the trust or to restrain breaches of it. Such actions are transitory and maintainable wherever the trustee may be found. *Massie* v. *Watts*, 6 Cranch 148, 158-160; *Beattie* v. *Johnstone*, 8 Hare 169, 177; *Gardner* v. *Ogden*, 22 N. Y. 327, 333-339.

The owner of the certificates in Ohio is thus vested with valuable rights, differing from those of ordinary ownership, including those enforcible against the trustee within as well as without the State. They are brought within the control of the State. These rights, the physical certificates with which they are identified, and the receipt and enjoyment of their income by the owner, are each protected by Ohio laws. If we look to substance rather than form, to the principles which underlie and justify the taxing power, rather than to descriptive terminology which, merely as a matter of convenience, we may apply to the interest taxed, it would seem to be as much subject to the taxing power as any other intangible interest brought within the control and protection of the State, even though its ultimate economic enjoyment may be dependent wholly on property located and taxed elsewhere. See *Citizens National Bank* v. *Durr*, *supra*; *Maguire* v. *Trefry*, *supra*, 16.

It is unimportant what labels writers on legal theory, the courts of Ohio, or this Court may place upon this interest. The Fourteenth Amendment did not adopt as ultimate verities the quaint distinctions taken three centuries ago by Sir Edward Coke between things that savour of the realty and other forms of right, and between corporeal and incorporeal rights. In applying the Fourteenth Amendment we may recognize, what he failed to realize, that all rights are incorporeal, and that whether they are rightly subjected to state taxing power must be determined by recourse to the principles upon which taxes have universally been laid and collected, rather than by the choice of a label which, by definition previously agreed upon, will infallibly mark the interest as non-taxable.

In every practical aspect—and taxation is a practical matter—the trust certificate holder stands in the same relationship to the land as the stockholder of a land owning corporation. It is not denied that the petitioner receives as much benefit and protection from the State of Ohio with respect to his certificates as does the owner of corporate stock, or that his interest is as much within the reach of the state power. Only by resort to subtle refinements of legal doctrine, devised without reference to the problems of taxation and irrelevant to them, or by treating the Fourteenth Amendment as an instrument for giving effect to our own peculiar convictions of what is morally or economically desirable, is it possible to sustain the taxation of the one and not the other.

Even though the tax be destroyed so far as it is imposed on petitioner's interest in the trusts of lands outside of Ohio, it cannot, for any reason advanced to support that conclusion, be deemed invalid as applied to appellant's interest in the Ohio trusts. The opinion of the Court suggests no other reason.

Whatever name we may give to the interest taxed, Ohio is not without jurisdiction of the land, the trustee, the certificates, or the owners of them. All are within the state. The objection to double taxation by a single sovereign is no more potent under the Fourteenth Amendment than the objection that a tax otherwise valid has been doubled. See *Carley & Hamilton* v. *Snook*, 281 U. S. 66, 72; *Magnano Co.* v. *Hamilton*, 292 U. S. 40. The imposition of a tax on a particular interest in land already taxed *ad valorem* does not infringe any constitutional immunity. *Swiss Oil Corporation* v. *Shanks*, 273 U. S. 407, 413 and cases cited.

The fact that the certificates are taxed, and the owners of interests in trusts of land not represented by certificates are untaxed, plainly involves no forbidden discrimination. The owners of transferable certificates, representing an equitable interest in a trust of land divided into shares, enjoy privileges and advantages not attaching to other forms of ownership, which are an adequate basis for a difference in taxation. See *Southwestern Oil Co.* v. *Texas*, 217 U. S. 114, 121; *Bells Gap R. Co.* v. *Pennsylvania*, 134 U. S. 232, 237; *Home Insurance Co.* v. *New York*, 134 U. S. 594, 606; *Brown-Forman Co.* v. *Kentucky*, 217 U. S. 563, 572; *State Board of Tax Commissioners* v. *Jackson*, 283 U. S. 527, 537.

The judgment now given cannot rest on the Delphic concession of counsel, that the State has "no power to tax land or interests in land situate beyond its borders," and that, if situate within the State, there is no power to tax them "in any other manner than by uniform rule according to value." The concession, so far as it relates to the Ohio trusts, plainly has reference to requirements of the state and not the federal Constitution. For the Fourteenth Amendment does not restrict a state to the taxation of all interests in land uniformly according to value.

We are not concerned with the validity of the tax under the state constitution. The state court has plenary power to settle that question for the litigants and for us, *Withers* v. *Buckley*, 20 How. 84, 89; *Pennsylvania College Cases*, 13 Wall. 190, 212; *Walker* v. *Sauvinet*, 92 U. S. 90; *Southwestern Oil Co.* v. *Texas*, *supra*, 119, as it has done by sustaining the tax. No concession of counsel about his theory of the law requires us to adopt his theory, however mistaken and irrelevant, for decision of the federal question which is alone before us. None can confer on us jurisdiction to review on appeal the decision of a state question by the highest court of the State, or excuse the abuse of power involved in our reversing its judgment on state grounds.

The objections to the tax affecting the Ohio trusts present no substantial federal question, or any which the Court has deemed it necessary to consider. The tax affecting the extra-state trusts should be sustained as not infringing any constitutional guarantee.

Mr. Justice BRANDEIS and Mr. Justice CARDOZO join in this opinion.